

Attorneys for Defendant

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARLON JERMAINE SPENCER,

Defendant.

**STIPULATED REQUEST TO CONTINUE
STATUS HEARING OR ANTICIPATED
DEFENDANT'S PRETRIAL MOTIONS
DATE TO NOVEMBER 23, 2009 AND TO
EXCLUDE TIME UNDER THE SPEEDY
TRIAL ACT**

Date: October 5, 2009
Time: 1:30 p.m.
Court: Hon. James Ware

The request was not processed. After numerous follow-up phone calls from defense counsel to the Monterey County Superior Court an additional request was sent on September 8,

2009. On September 17, 2009 the clerk of the Monterey County Superior court responded to defense counsel's second request for a copy of the search warrant application including the statement of probable cause, search warrant #4992. Defense counsel was informed that the statement of probable cause was sealed and could only be disclosed pursuant to a court order under *People v. Hobbs* (1994) 7 Cal. 4th 948.

Defense counsel informed AUSA Shawna Yen of this fact. AUSA Shawna Yen is now investigating the circumstances surrounding the sealing of the search warrant documents. Ms. Yen has informed defense counsel she will update our office as soon as she has more information regarding the circumstances of the sealing of the statement of probable cause. As a result, the parties need additional time.

The Defendant intends to file a motion to suppress in this matter and an integral part of that motion requires a review of the entire search warrant application and statement of probable cause. These sealed documents are necessary to effectively prepare the papers and filings on the motion to suppress. For those reasons, the parties stipulate and request that the Court continue the hearing and exclude time between October 5, 2009 and November 23, 2009 under the Speedy Trial Act for reasonable time necessary for counsel to effectively prepare, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv). The parties jointly agree that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial.

Dated September 29, 2009

/S/ Ariel Boyce-Smith
Ariel Boyce-Smith
Attorney for Defendant

/S/ Shawna Yen
Shawna Yen
Assistant United States Attorney

I hereby attest that I have authorization to file this document on behalf of those individuals whose signatures are indicated by a "conformed" signature (/S/) within this e-filed document.

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARLON JERMAINE SPENCER,

Defendant.

)
) **Case No.: CR-09-0400 JW**
)
) **[*Proposed*] ORDER GRANTING**
) **STIPULATED REQUEST TO CONTINUE**
) **STATUS HEARING OR ANTICIPATED**
) **DEFENDANT’S PRETRIAL MOTIONS**
) **TO EXCLUDE TIME UNDER THE**
) **SPEEDY TRIAL ACT**
)
) **Date: October 5, 2009**
) **Time: 1:30 p.m.**
) **Court: Hon. James Ware**

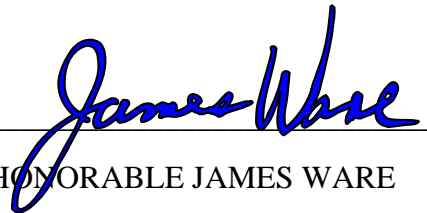
The parties jointly requested that the status hearing or anticipated defendant pretrial motions in this matter be continued from October 5, 2009 to November 23, 2009, and that time be excluded under the Speedy Trial Act between October 5, 2009 to November 23, 2009 to allow for the effective preparation of counsel for the reasons set forth in the parties' stipulated request. For these stated reasons, the Court finds that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. Good cause appearing therefore, and pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv),

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1 **IT IS HEREBY ORDERED** that this matter is set for status hearing or anticipated
2 defendant's pretrial motions on November 23, 2009 at 1:30 p.m. and that time between October
3 5, 2009 to November 23, 2009 will continue to be excluded under the Speedy Trial Act to allow
4 for the effective preparation of counsel, taking into account the exercise of due diligence.

5
6
7 DATED: October 2, 2009


HONORABLE JAMES WARE
United States District Court Judge